

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SENIOR HOUSING ASSISTANCE
GROUP,

Plaintiff,

v.

AMTAX HOLDINGS 260, LLC, et al.,

Defendants.

AMTAX HOLDINGS 260, LLC, et al.,

Counter-Plaintiffs,

v.

SENIOR HOUSING ASSISTANCE
GROUP, et al.,

Counter-Defendants.

No. 2:17-cv-01115-RSM

REVISED PRETRIAL ORDER

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I. JURISDICTION

This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332. The matter in controversy exceeds the sum of \$75,000, exclusive of interest, attorneys' fees, and costs, and is between citizens of different States. This action seeks declaratory relief pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202, which grant this Court authority to declare the rights and other legal relations surrounding questions of actual controversy that exist between plaintiffs and defendants.

II. CLAIMS AND DEFENSES¹

Plaintiff:

At trial, Plaintiff Senior Housing Assistance Group ("SHAG") seeks a declaratory judgment declaring as follows (unless otherwise defined, all capitalized terms have the meaning given them in the Complaint):

A. SHAG's Special ROFRs for Meridian Court, Auburn Court, Boardwalk, and WoodRose were triggered; and

B. SHAG has properly and effectively exercised its Special ROFRs for Meridian Court, Auburn Court, Boardwalk, and WoodRose.

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¹ The remaining parties have defined these claims and defenses to conform to the Court's Order re: Motions for Summary Judgment, Dkt. 142, as clarified by the Court's Order Denying Defendants' Motion for Reconsideration, Dkt. 148. All parties reserve all rights with respect to the claims and defenses addressed in those orders.

1 **Defendants / Counter-Plaintiffs / Third-Party Plaintiffs:**

2 At trial, Defendants/Counter-Plaintiffs/Third Party Plaintiffs (the “Investor Limited
3 Partners”)² will ask the Court to find that SHAG is not entitled to the judicial declaration it
4 seeks because its contractual rights of first refusal for Meridian Court, Auburn Court,
5 Boardwalk, and WoodRose cannot be exercised due to SHAG’s inability to establish the
6 existence of bona fide and enforceable third-party offers to purchase the Projects that the
7 Project Partnerships intended to accept. The Investor Limited Partners also intend to establish
8 the following affirmative defense set forth in their Answer to Complaint and Counterclaims,
9
10 Dkt. 26:

- 11
- 12 • that SHAG’s claim is barred by the doctrine of unclean hands as a result of:
 - 13 ○ SHAG’s efforts to hide the Global Indemnity Agreement from the Investor
14 Limited Partners in connection with the attempted exercise of its rights of first
15 refusal for Meridian Court, Auburn Court, Boardwalk, and WoodRose;³
 - 16 ○ SHAG’s efforts to solicit sham offers and “straw buyers” in order to self-trigger its
17 rights of first refusal for Meridian Court, Auburn Court, Boardwalk, and
18 WoodRose;
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 - 20 ○ SHAG’s concealment and mischaracterization of its intentions regarding the
21 disposition of the Projects in order to encourage third-party interest in possible
22 sales that SHAG had no intention of consummating.
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26 ² The Investor Limited Partners are AMTAX Holdings 260, LLC, Protech Holdings W, LLC, AMTAX Holdings
27 259, LLC, AMTAX Holdings 261, LLC, AMTAX Holdings 258, LLC, AMTAX Holdings 257, LLC, AMTAX
Holdings 164, LLC, Protech 2002-A, LLC, AMTAX Holdings 109, LLC, and Protech 2001-B, LLC.

28 ³ As SHAG will argue in its trial brief, SHAG contends that the Court’s Order re: Motions for Summary
Judgment, Dkt. 142, precludes this argument with respect to the Global Indemnity Agreement.

1 On their remaining counterclaim, the Investor Limited Partners seek a declaratory
2 judgment declaring that SHAG's ROFR for Meridian Court, Auburn Court, Boardwalk, and
3 WoodRose under Section 7.4.L of the Partnership Agreements have not been triggered.
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5 **III. ADMITTED FACTS**

6 The following facts are admitted by the Parties:

7 **The Meridian Court Project**

8 1. The Meridian Court Apartments Project ("Meridian Court") is a 200-unit
9 affordable retirement community located in Federal Way, Washington, serving exclusively
10 low- and moderate-income elderly and disabled persons with household incomes at or below
11 60% of the area median gross income.
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13 2. The owner of Meridian Court is the Meridian Court Apartments Limited
14 Partnership, a Washington limited partnership.
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16 3. Steel Lake Enterprises, LLC ("Steel Lake") is the General Partner of the
17 Meridian Court Apartments Limited Partnership.

18 4. AMTAX Holdings 260, LLC is the Investor Limited Partner of the Meridian
19 Court Apartments Limited Partnership.
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21 5. Protech Holdings W, LLC ("Protech Holdings W") is the Special Limited
22 Partner of the Meridian Court Apartments Limited Partnership.

23 6. A true and correct copy of the Meridian Court Apartments Limited Partnership
24 Second Amended and Restated Agreement of Limited Partnership Dated as of November 12,
25 2002 has been marked as Trial Exhibit 3.
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27 7. The 15-year compliance period for Meridian Court expired on December 31,
28 2012.

1 **The Auburn Court Project**

2 8. The Auburn Court Apartments Project (“Auburn Court”) is a 296-unit
3 affordable retirement community located in the City of Auburn, Washington, serving
4 exclusively low- and moderate-income elderly and disabled persons with household incomes
5 at or below 60% of the King County area median gross income.
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7 9. The owner of Auburn Court is Auburn North Associates Limited Partnership, a
8 Washington limited partnership.
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10 10. SHAG is the General Partner of the Auburn North Associates Limited
11 Partnership.
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13 11. AMTAX Holdings 259, LLC is the Investor Limited Partner of the Auburn
14 North Associates Limited Partnership.
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16 12. Protech Holdings W is the Special Limited Partner of the Auburn North
17 Associates Limited Partnership.
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19 13. A true and correct copy of the Auburn North Associates Limited Partnership
20 Third Amended and Restated Agreement of Limited Partnership Dated as of November 12,
21 2002 has been marked as Trial Exhibit 1.
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23 14. The 15-year compliance period for Auburn Court expired on December 31,
24 2013.
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26 **The Boardwalk Project**

27 15. The Boardwalk Apartments Project (“Boardwalk”) is a 284-unit affordable
28 retirement community located in the City of Olympia, Washington, serving exclusively low-
and moderate-income elderly and disabled persons with household incomes at or below 60%
of the Thurston County area median gross income.

1 16. The owner of Boardwalk is Capitol Way Associates Limited Partnership, a
2 Washington limited partnership.

3 17. Senior Housing Assistance Corporation (“SHAC”) is the General Partner of
4 the Capitol Way Associates Limited Partnership.
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6 18. AMTAX Holdings 261, LLC is the Investor Limited Partner of the Capitol
7 Way Associates Limited Partnership.

8 19. Protech Holdings W is the Special Limited Partner of the Capitol Way
9 Associates Limited Partnership.
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11 20. A true and correct copy of the Capitol Way Associates Limited Partnership
12 Third Amended and Restated Agreement of Limited Partnership Dated as of November 12,
13 2002 has been marked as Trial Exhibit 2.
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15 21. The 15-year compliance period for Boardwalk expired on December 31, 2014.

16 **The WoodRose Project**

17 22. WoodRose is a 197-unit affordable retirement community located in the City
18 of Bellingham, Washington, serving exclusively low-income elderly persons with household
19 incomes at or below 60% of the Whatcom County area median gross income.
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21 23. The owner of WoodRose is Racine Street Associates Limited Partnership, a
22 Washington limited partnership.

23 24. SHAC is the General Partner of the Racine Street Associates Limited
24 Partnership.
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26 25. AMTAX Holdings 258, LLC is the Investor Limited Partner of the Racine
27 Street Associates Limited Partnership.
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1 **SHAG**

2 The following witnesses will be called by SHAG to testify at trial:

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Name	Address	Subject Matter
Jay Woolford	c/o Jake Ewart Hillis Clark Martin & Peterson 999 Third Avenue, Suite 4600 Seattle, WA 98101 (206) 623-1745	Mr. Woolford is expected to testify about the existence and exercise of SHAG's Special ROFRs and third-party offers to purchase the LIHTC projects at issue and related communications, decisions, and interactions. In addition, and only to the extent these topics relate to the issues remaining for trial, Mr. Woolford is expected to testify about the LIHTC program; SHAG's organizational background, affiliates, and mission; the roles of SHAG, SHAC, and the SHAG Community Life Foundation in LIHTC projects, including the LIHTC projects at issue; the operation and decision-making of the LIHTC projects and partnerships at issue; other contracts relevant to SHAG's remaining claims; and other matters relevant to SHAG's remaining claims.

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Name	Address	Subject Matter
Bryan Park	c/o Dennis H. Walters Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, WA 98104 (206) 223-1313	Mr. Park is expected to testify about the existence and exercise of SHAG's Special ROFRs and third-party offers to purchase the LIHTC projects at issue and related communications, decisions, and interactions. In addition, and only to the extent these topics relate to the issues remaining for trial, Mr. Park is expected to testify about the LIHTC program; the drafting, negotiation, and execution of the limited partnership agreements at issue and other agreements relevant to SHAG's claims; the history of the project partnerships and entities at issue; general corporate and financial matters relating to the limited partnerships and LIHTC projects at issue and SHAG's claims; tax information relating to the limited partnerships and LIHTC projects at issue; the operation of the limited partnerships and LIHTC projects at issue; relationships between SHAG, SHAC, Defendants, third-party defendants, and other entities; other matters relevant to SHAG's remaining claims.

The following are possible witnesses only that may be called by SHAG to testify at trial:

Name	Address	Subject Matter
Stephen H. Smith*	c/o Richard Mount Witherspoon Kelley 422 W. Riverside Avenue Suite 1100 Spokane, WA 99201-0300 (509) 624-5265	Mr. Smith may testify about offers made by SSRE Development, LLC to purchase LIHTC projects at issue in this action, and his relationships with persons or entities involved in this action.

Name	Address	Subject Matter
Representative from Reliant Group Management, LLC	c/o Sanjeet Ganjam Shartsis Friese LLP One Maritime Plaza Eighteenth Floor San Francisco, CA 94111 (415) 773-7275	A representative from Reliant Group Management, LLC would be called only as a rebuttal witness as contemplated by the stipulation at Dkt. 77. The representative would be expected to testify about Reliant's interest in and efforts to purchase LIHTC properties at issue in this action.
Representative from Redwood Housing Partners, LLC	c/o Chuck Rullman Corr Downs PLLC 100 W. Harrison St. Ste. N440 Seattle, WA 98119 (206) 962-5040	A representative from Redwood Housing Partners, LLC would be called only as a rebuttal witness as contemplated by the stipulation at Dkt. 77. The representative would be expected to testify about RHP's interest in and efforts to purchase LIHTC properties at issue in this action.
Records Custodian for Defendants		A records custodian may be called if necessary to authenticate documents.
Records Custodian for Third-Party Defendants		A records custodian may be called if necessary to authenticate documents.

Investor Limited Partners

The following witnesses will be called by the Investor Limited Partners to testify at trial:

Name	Address	Subject Matter
Ryan Trane	c/o Christopher Caldwell Boies Schiller Flexner LLP 725 South Figueroa Street 31 st Floor Los Angeles, CA 90017 (213) 629-9040	Mr. Trane is expected to testify about the low-income housing tax credit (“LIHTC”) program; the Investor Limited Partners’ organizational structure and role in the LIHTC industry; the limited partnerships at issue in this litigation (the “Project Partnerships”); SHAG’s efforts to self-trigger and unilaterally exercise its rights of first refusal under Section 7.4.L of the partnership agreements for Meridian Court, Auburn Court, Boardwalk, and WoodRose; SHAG’s efforts to hide the existence of the Global Indemnity Agreement from the Investor Limited Partners; and other matters relevant to SHAG’s claim and the Investor Limited Partners’ unclear hands affirmative defense and remaining counterclaim.

The following are possible witnesses only who may be called by the Investor Limited Partners to testify at trial:

Name	Address	Subject Matter
Bryan Park	c/o Dennis H. Walters Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, WA 98104 (206) 223-1313	Mr. Park may be called to testify about SHAG’s efforts to self-trigger and unilaterally exercise its rights of first refusal under Section 7.4.L of the Partnership Agreements for Meridian Court, Auburn Court, Boardwalk, and WoodRose; SHAG’s efforts to hide the existence of the Global Indemnity Agreement; ; SHAG’s efforts to solicit sham offers and “straw buyers” in order to self-trigger its rights of first

Name	Address	Subject Matter
		refusal; SHAG's concealment and mischaracterization of its intentions regarding the disposition of the Projects in order to encourage third-party interest in possible sales that SHAG had no intention of consummating; SHAG's false statements to third parties that the Investor Limited Partners were frustrating SHAG's ability to sell the Projects; and other matters relevant to SHAG's claim and the Investor Limited Partners' unclean hands affirmative defense and remaining counterclaim.
John "Jay" Woolford	c/o Jake Ewart Hillis Clark Martin & Peterson 999 Third Avenue, Suite 4600 Seattle, WA 98101 (206) 623-1745	Mr. Woolford may be called to testify about SHAG's efforts to self-trigger and unilaterally exercise its right of first refusal under Section 7.4.L of the Partnership Agreements for Meridian Court, Auburn Court, Boardwalk, and WoodRose; SHAG's efforts to hide the existence of the Global Indemnity Agreement; SHAG's efforts to solicit sham offers and "straw buyers" in order to self-trigger its rights of first refusal; SHAG's concealment and mischaracterization of its intentions regarding the disposition of the Projects in order to encourage third-party interest in possible sales that SHAG had no intention of consummating; SHAG's false statements to third parties that the Investor Limited Partners were frustrating SHAG's ability to sell the Projects; and other matters relevant to SHAG's claim and the Investor Limited Partners' affirmative defense and remaining counterclaim.
Stephen Smith*	c/o Richard Mount Witherspoon Kelley 422 W. Riverside Avenue Suite 1100 Spokane, WA 99201-0300 (509) 624-5265	Mr. Smith may be called to testify regarding his relationship with Bryan Park and SHAG; SHAG's efforts to solicit sham offers and "straw buyers" in order to self-trigger and unilaterally exercise its ROFR under Section 7.4.L

Name	Address	Subject Matter
		of the Partnership Agreements for Meridian Court and Auburn Court; and other matters relevant to SHAG's claim and the Investor Limited Partners' affirmative defense and remaining counterclaim.
Representative from Reliant Group Management, LLC	c/o Sanjeet Ganjam Shartsis Friese LLP One Maritime Plaza Eighteenth Floor San Francisco, CA 94111 (415) 773-7275	A representative from Reliant Group Management, LLC would be called only as a rebuttal witness as contemplated by the stipulation at Dkt. 77. The representative would be expected to testify about SHAG's efforts to self-trigger and unilaterally exercise its ROFR under Section 7.4.L of the Partnership Agreements for the Project Partnerships that own the Boardwalk Apartments, the WoodRose Apartments, the Meridian Court Apartments, and the Auburn Court Apartments.
Representative from Redwood Housing Partners, LLC	c/o Chuck Rullman Corr Downs PLLC 100 W. Harrison Street Suite N440 Seattle, WA 98119 (206) 962-5040	A representative from Redwood Housing Partners, LLC would be called only as a rebuttal witness as contemplated by the stipulation at Dkt. 77. The representative would be expected to testify about SHAG's efforts to self-trigger and unilaterally exercise its ROFR under Section 7.4.L of the Partnership Agreements for the Project Partnership that owns the Auburn Court Apartments.
Records Custodian for the Limited Partners	c/o Christopher Caldwell Boies Schiller Flexner LLP 725 South Figueroa Street 31 st Floor Los Angeles, CA 90017 (213) 629-9040	A record custodian may be called if necessary to authenticate documents.
Records Custodian for SHAG	c/o Jake Ewart Hillis Clark Martin & Peterson 999 Third Avenue, Suite 4600 Seattle, WA 98101 (206)623-1745	A record custodian may be called if necessary to authenticate documents.

Name	Address	Subject Matter
Records Custodian for Third Party Defendants	c/o Dennis H. Walters Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, WA 98104 (206) 223-1313	A record custodian may be called if necessary to authenticate documents.

VII. EXHIBITS

The Parties have reduced the trial exhibit list they filed on February 20, 2019 (Dkt. 143-1) by hundreds of exhibits, and are continuing to meet and confer in an effort to further reduce the number of trial exhibits and resolve remaining objections. The Parties will file an exhibit list on February 27, 2019, when the hard copies of the exhibits will be lodged with the Court.

VIII. ACTION BY THE COURT

(a) This case is scheduled for trial without a jury on March 4, 2019 at 9:00 a.m.

(b) Trial briefs, proposed findings of fact and conclusions of law, deposition designations (if any), a revised trial exhibit list, and hard copies of trial exhibits shall be submitted to the Court on or before February 27, 2019.

This order has been approved by the Parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the Court pursuant to an agreement of the Parties or to prevent manifest injustice.

DATED this 5 day of March 2019.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

1 FORM APPROVED:

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